

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: APU	CCRB Case #: 201802481	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 03/24/2018 8:25 PM	Location of Incident: East 188th Street and Belmont Avenue	Precinct: 48	18 Mo. SOL 9/24/2019	EO SOL 9/24/2019	
Date/Time CV Reported Thu, 03/29/2018 2:15 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 03/29/2018 2:15 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Kurtis Rose	00000	946196	048 PCT
2. POM Liang Lin	20340	955066	048 PCT
3. POF Lori Loperfito	09855	960823	048 PCT
4. POM Justin Hoff	24506	953969	ESU
5. POM Michael Soto	07250	952259	048 PCT
6. An officer			048 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Kimberly Rose	20482	963245	048 PCT
2. POM Kelvin White	02063	949796	PBBX
3. POM Matthew Capobianco	20413	958365	048 PCT
4. POF Elizabeth Velazquez	18694	921835	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Justin Hoff	Abuse: Police Officer Justin Hoff stopped § 87(2)(b)	
B.POM Justin Hoff	Abuse: Police Officer Justin Hoff stopped § 87(2)(b)	
C.POM Justin Hoff	Abuse: Police Officer Justin Hoff stopped § 87(2)(b)	
D.POM Justin Hoff	Abuse: Police Officer Justin Hoff stopped individuals.	
E.POM Michael Soto	Abuse: Police Officer Michael Soto stopped § 87(2)(b)	
F.POM Michael Soto	Abuse: Police Officer Michael Soto stopped § 87(2)(b)	
G.POM Michael Soto	Abuse: Police Officer Michael Soto stopped § 87(2)(b)	
H.POM Michael Soto	Abuse: Police Officer Michael Soto stopped individuals.	
I.POM Justin Hoff	Abuse: Police Officer Justin Hoff drew his gun.	
J.POM Michael Soto	Abuse: Police Officer Michael Soto drew his gun.	
K.POM Justin Hoff	Abuse: Police Officer Justin Hoff frisked an individual.	

Officer(s)	Allegation	Investigator Recommendation
L.POM Michael Soto	Abuse: Police Officer Michael Soto frisked an individual.	[REDACTED]
M.POM Liang Lin	Abuse: Police Officer Liang Lin frisked § 87(2)(b)	[REDACTED]
N.POM Liang Lin	Abuse: Police Officer Liang Lin frisked § 87(2)(b)	[REDACTED]
O.POM Liang Lin	Abuse: Police Officer Liang Lin searched § 87(2)(b)	[REDACTED]
P.POM Liang Lin	Abuse: Police Officer Liang Lin searched individuals.	[REDACTED]
Q.POF Lori Loperfito	Abuse: Police Officer Lori Loperfito frisked individuals.	[REDACTED]
R.POF Lori Loperfito	Abuse: Police Officer Lori Loperfito searched individuals.	[REDACTED]
S. An officer	Force: An officer pointed his gun at § 87(2)(b)	[REDACTED]
T. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	[REDACTED]
U. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	[REDACTED]
V.LT Kurtis Rose	Abuse: Lieutenant Kurtis Rose detained § 87(2)(b)	[REDACTED]
W.LT Kurtis Rose	Abuse: Lieutenant Kurtis Rose detained § 87(2)(b)	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]

Case Summary

This complaint was filed by § 87(2)(b) and § 87(2)(b) on March 29, 2018 in person at the CCRB. § 87(2)(b) and § 87(2)(b) are reporting non-witnesses and reported this incident on behalf of their children, § 87(2)(b) § 87(2)(b) old, § 87(2)(b) § 87(2)(b) old, and § 87(2)(b).

On March 24, 2018, at approximately 8:25 p.m., a group of juvenile males consisting of § 87(2)(b) § 87(2)(b) and other unidentified individuals were stopped by PO Justin Hoff and PO Michael Soto from the 48th Precinct (**Allegations A-H: Abuse of Authority, § 87(2)(g)**). PO Hoff drew his gun (**Allegation I: Abuse of Authority, § 87(2)(g)**). PO Soto drew his gun (**Allegation J: Abuse of Authority, § 87(2)(g)**). PO Hoff and PO Soto each frisked § 87(2)(b) from the group (**Allegations K-L: Abuse of Authority, § 87(2)(g)**). PO Liang Lin from the 48th Precinct frisked § 87(2)(b) and § 87(2)(b) (**Allegations M-N: Abuse of Authority, § 87(2)(g)**). PO Lin searched § 87(2)(b) and individuals (**Allegations O-P: Abuse of Authority, § 87(2)(g)**). PO Lori Loperfito from the 48th Precinct frisked and searched individuals (**Allegations Q-R: Abuse of Authority, § 87(2)(g)**). An officer pointed his gun at § 87(2)(b) (**Allegation S: Force, § 87(2)(g)**). An officer spoke discourteously to § 87(2)(b) and § 87(2)(b) (**Allegations T-U: Discourtesy, § 87(2)(g)**). On the authority of Lt. Kurtis Rose from the 48th Precinct, § 87(2)(b) and § 87(2)(b) were detained (**Allegations V-W: Abuse of Authority, § 87(2)(g)**).

§ 87(2)(b) and § 87(2)(b) were taken to the stationhouse and juvenile reports were generated reflecting that they committed § 87(2)(b).

BWC video of the incident was obtained (BR01-03).

§ 87(2)(g)

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Justin Hoff stopped § 87(2)(b)
Allegation B – Abuse of Authority: Police Officer Justin Hoff stopped § 87(2)(b)
Allegation C – Abuse of Authority: Police Officer Justin Hoff stopped § 87(2)(b)
Allegation D – Abuse of Authority: Police Officer Justin Hoff stopped individuals.
Allegation E – Abuse of Authority: Police Officer Michael Soto stopped § 87(2)(b)
Allegation F – Abuse of Authority: Police Officer Michael Soto stopped § 87(2)(b)
Allegation G – Abuse of Authority: Police Officer Michael Soto stopped § 87(2)(b)
Allegation H – Abuse of Authority: Police Officer Michael Soto stopped individuals.
Allegation I – Abuse of Authority: Police Officer Justin Hoff drew his gun.
Allegation J – Abuse of Authority: Police Officer Michael Soto drew his gun.

§ 87(2)(b) is a § 87(2)(b) old male, stands about 5'6" tall, weighs 140 pounds, and has black hair. § 87(2)(b) is an § 87(2)(b) year-old boy, stands about 3'0" tall, weighs 90 pounds, and has black hair. Body worn camera video reflects § 87(2)(b) was wearing a black hoodie, and a black

durag and § 87(2)(b) was wearing a red jacket and a skull hat. A clip of BWC capturing the arrest of § 87(2)(b) and § 87(2)(b) is embedded below (BR 33).



201802481_20181010_1508_DM.mp4

§ 87(2)(b) § 87(2)(b) old, and § 87(2)(b) § 87(2)(b) years old, provided the following generally consistent testimony (BR04-05). § 87(2)(b) and § 87(2)(b) were walking toward their home when they were joined by a group of friends from § 87(2)(b)'s school, consisting of § 87(2)(b) and two to three other individuals. § 87(2)(b) described one individual, "§ 87(2)(b) as a Hispanic male, who stood about 5'7" tall, and had a slim build. Another, "§ 87(2)(b) is a Honduran male, stands about 5'5" tall, and has a chubby build. § 87(2)(b) § 87(2)(b)'s brother, was described as a black male who stands about 5'3" tall. While walking, members of the group picked up sticks that were about a foot long.

§ 87(2)(b) stated that two of his friends who he only knew as "§ 87(2)(b) and "§ 87(2)(b) had the sticks and that they were chasing each other with the sticks on the sidewalk. One stick was a tree branch and the other was like a wooden broomstick. § 87(2)(b) recommended to his friends that they put the sticks down and they complied. § 87(2)(b) noticed multiple police cars approaching the group. One officer exited his car with his gun drawn, told the group to get against a wall, and everyone complied. § 87(2)(b) did not know if other officers had their guns drawn.

§ 87(2)(b) stated that everyone except him had a stick and that they were solely walking with the sticks. Multiple police cars drove by them before someone told everyone over the speaker to drop the sticks and get against the wall. Everyone complied. Eight officers approached with their guns drawn.

§ 87(2)(b) was scheduled to appear with her son § 87(2)(b) for two interviews and she failed to appear with him. § 87(2)(b) and their parents did not have any identifying information or contact information for the other juveniles involved in this incident or their parents which prevented the investigation from interviewing them.

Event documents and the associated 911 recording for this incident revealed that a male caller reported two males, one with a machete and another with a stick, were chasing other males. The males were running back and forth. One of the suspects was described as a Hispanic male in his 20s, wearing an orange hoodie, a black durag, and black and white sneakers (BR06-07).

PO Soto and PO Hoff were not equipped with body worn cameras and no cameras were identified at the incident location.

PO Hoff and PO Soto testified that they were the first officers to observe the group of young teenagers and stop them (BR08-09). Both officers cited a radio run reporting a group of individuals with machetes chasing and fighting other individuals as a basis for stopping the individuals involved in this incident. No UF250 report was prepared about this incident.

PO Hoff testified that he observed a group of teenagers running on the sidewalk, in between cars, and in the roadway. Two of these juveniles, who he later pointed out to the platoon commander and who the investigation identified as § 87(2)(b) and § 87(2)(b) were running with large objects that were two to three feet long which seemed longer than machetes but he was not sure what they were. Based on their behavior and the large objects, PO Hoff believed this was the group reported in the radio run. PO Hoff instructed the group to let him see their hands and they did not comply. PO Hoff drew his weapon because the group did not comply, he could not see their hands because it was dark, their bodies were turned away from him, and he was fearful for his safety.

PO Soto testified that he observed a group of teenagers huddled together with their backs turned to the street near a building alleyway. PO Soto suspected the people from the group were associated with the radio run because they matched a clothing description provided in the radio run, but he could not remember the clothing description. PO Soto did not see the individuals doing anything and they were not holding sticks. PO Soto asked the juveniles what they were doing and one of them said they were playing with sticks. PO Soto asked the juveniles to get against the wall and they complied. PO Soto did not draw his gun.

An officer may forcibly stop an individual when he possesses reasonable suspicion that the person has committed, is committing, or is about to commit a felony or misdemeanor. People v. De Bour, 40 N.Y.2d 210 (1976) (BR10).

Reasonable suspicion did not exist where a defendant was standing alongside a man who was alleged to possess a gun. This may have been sufficient to justify an inquiry by the officer but was insufficient to justify a gunpoint stop and frisk of the defendant. People v. Durant, 175 A.D.2d 176 (1991) (BR11).

The decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present. NYPD Patrol Guide, Procedure 221-01 (BR12).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

Allegation K – Abuse of Authority: Police Officer Justin Hoff frisked § 87(2)(b)
Allegation L – Abuse of Authority: Police Officer Michael Soto frisked § 87(2)(b)
Allegation M – Abuse of Authority: Police Officer Liang Lin frisked § 87(2)(b)
Allegation N – Abuse of Authority: Police Officer Liang Lin frisked § 87(2)(b)
Allegation O – Abuse of Authority: Police Officer Liang Lin searched § 87(2)(b)
Allegation P – Abuse of Authority: Police Officer Liang Lin searched individuals.
Allegation Q – Abuse of Authority: Police Officer Lori Loperfido frisked individuals.
Allegation R – Abuse of Authority: Police Officer Lori Loperfido searched individuals.

§ 87(2)(b) and § 87(2)(b) both testified that PO Lin and PO Loperfido, the officers who brought them to the stationhouse at the end of the incident, frisked them and their friends before they were taken into custody. § 87(2)(b) testified that PO Lin searched his pockets and removed his cell phone. § 87(2)(b) also testified that PO Loperfido frisked and searched their friends' pockets. § 87(2)(b) denied that his pockets were searched.

PO Hoff and PO Soto each testified that they frisked one individual from the group, but neither recalled who. Both officers were shown photos of § 87(2)(b) and § 87(2)(b) during their interviews and they did not remember whether it was either of these individuals who they frisked. Both officers cited a fear for their safety that the individual might have a weapon based on the information reported over the radio that the suspects possessed weapons. Both officers also noted that all the juveniles were frisked by other officers who arrived shortly after they stopped the group, but they did not remember who. As noted above, PO Hoff and PO Soto provided discrepant testimony about whether the individuals in the group were holding sticks when they were stopped. PO Soto testified that he did not observe anything on the individual he frisked that made him believe he had a weapon. On the other hand, PO Hoff noted that the individual he frisked had heavy objects in his pockets which he suspected might be a weapon, though he did not remember more specifically what he saw. Upon frisking the individual, PO Hoff did not feel anything that he thought was a weapon. PO Hoff did not remember if the person he frisked had been carrying a stick. No weapons were found on the juveniles.

PO Lin and PO Loperfido denied frisking or searching any of the stopped individuals (BR13-14). Both officers testified that other officers, they did not remember who, already had the group of juveniles stopped by the time they arrived at the location. They did not observe anyone being searched or frisked. PO Kimberly Rose, PO Kelvin White, PO Matthew Capobianco, who were

identified as responding to the job, denied frisking or searching any of the individuals and were unable to identify any officer who did (BR15-17). PO Lin and PO Capobianco testified that they did not observe anything on any members of the group that they suspected was a weapon.

The available BWC video does not substantively capture the portion of the incident when the alleged frisks and searches would have occurred (BR01-03, 18-19).

An officer may frisk an individual when he reasonably suspects that he is in danger of physical injury by virtue of the individual being armed. People v. De Bour, 40 N.Y.2d 210 (1976).

The appearance of a bulky object in an individual's pocket alone does not justify an officer frisking or searching the pocket. People v. Cornelius, 113 A.D.2d 666 (1986) (BR32).

§ 87(2)(g)

§ 87(2)(g)

Allegation S – Force: An officer pointed his gun at § 87(2)(b)

Allegation T – Discourtesy: An officer spoke discourteously to § 87(2)(b)

Allegation U – Discourtesy: An officer spoke discourteously to § 87(2)(b)

§ 87(2)(b) testified that while he was being frisked and searched, he turned around and an officer who was a white male with medium length brown hair had his gun pointed at § 87(2)(b)'s back. This officer told § 87(2)(b) to “turn the fuck back around.” A male officer, who § 87(2)(b) could not describe further, told § 87(2)(b) to “Put your fucking foot back on the ground,” seemingly because he lifted his foot while he was being frisked and searched.

§ 87(2)(b) testified that the officers did not use any profanity toward him or anyone else from the group. The only testimony § 87(2)(b) provided about officers having their guns drawn was from the officers' initial approach, as described under Allegations A-J.

Lt. Rose, PO Soto, PO Hoff, PO Capobianco, PO Lin, PO Loperfido, PO Rose, and PO White all denied using any profanity toward anyone from the group, hearing any other officer do so, or

seeing anyone with their gun pointed at anyone. The officers were all generally consistent in describing that the stopped individuals were compliant and cooperative during the encounter. The officers were unable to identify other officers who were present during this incident.

Event documents and the resource recap log suggested that the following additional officers may have responded to the incident: PO Christine Oakley, PO Matthew Fialkovic, PO Jeffrey Galeano, PO Hasan Radoncic, and PO Erika Gil (BR20). These officers' photos and memo books were requested. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation V – Abuse of Authority: Lieutenant Kurtis Rose detained § 87(2)(b)

Allegation W – Abuse of Authority: Lieutenant Kurtis Rose detained § 87(2)(b)

Lt. Rose testified that he responded to the location after hearing a radio run which reported juveniles fighting and being in possession of weapons (BR23). Per event documentation, the only radio run related to this incident regarded the 20-year old male with a machete and stick chasing a group. Lt. Rose did not get in touch with the 911 caller and did not know if any other officer spoke with him. Lt. Rose investigated the incident by speaking with officers on scene about what happened. The group of juveniles was compliant when Lt. Rose was on scene. Lt. Rose decided to have § 87(2)(b) and § 87(2)(b) taken to the stationhouse for a juvenile report for disorderly conduct. Lt. Rose was informed by officers that § 87(2)(b) and § 87(2)(b) were observed running with sticks. Aside from running with sticks, officers did not report any other information to Lt. Rose about the juveniles' conduct. § 87(2)(b) § 87(2)(b) old, and § 87(2)(b) § 87(2)(b) years old, did not assault or menace anyone, and there was no report of such from anyone within the group of juveniles. No weapons were found on any of the juveniles. Bystanders were present during this incident, but Lt. Rose did not see anyone alarmed. By running with sticks, the juveniles were involved in tumultuous behavior. Lt. Rose decided to have both juveniles placed in handcuffs, frisked, searched, and transported to the stationhouse to have juvenile reports prepared because a community member reported the incident to the police which meant Lt. Rose had to address the situation and make the children's parents aware of the situation. Lt. Rose also noted that the juveniles could have possibly been detained for criminal possession of a weapon.

PO Hoff testified that he did not make any observation of the juveniles' running causing any disruption. PO Hoff spoke with Lt. Rose and informed him about observing the two juveniles running with sticks. PO Hoff identified the two individuals to Lt. Rose and they were placed in custody. People were looking out of their windows and watching during the incident but did not do anything else besides watch.

PO Soto and PO Lin did not notice any crowd gather during the incident. PO White, PO Rose, and PO Capobianco did not remember if any crowd gathered.

As noted above, the 911 caller reported the possession of suspected weapons, a machete and a stick, and people running. The 48th Precinct Event Summary and Resource Recap Log did not reveal any other jobs related to this incident (BR20, 31).

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof: engages in fighting or in violent, tumultuous or threatening behavior. N.Y.S. Penal Law, Section 240.2(1)(BR28). Tumultuous behavior requires a crowd and relates to the violent movement, agitation, or milling about of a crowd. People v. Castro, 29 Misc. 3d 1217(A) (2010)(BR29).

A person is guilty of criminal possession of a weapon in the fourth degree when he possesses any...dangerous or deadly instrument or weapon with intent to use the same unlawfully against another. N.Y.S. Penal Law, section 265.01(2)(BR30).

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first complaint filed by or involving § 87(2)(b) or § 87(2)(b) (BR25)
- PO Soto has been a member of the service for six years, has no substantiated allegations, § 87(2)(g)
- PO Hoff has been a member of the service for five years, has no substantiated allegations, § 87(2)(g)
- Lt. Rose has been a member of the service for ten years, has no substantiated allegations, § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was suitable for mediation and was offered to § 87(2)(b) and § 87(2)(b). They chose for the complaint to be investigated.
- The NYC Comptroller's Office responded to a request on July 31, 2018 indicating that no notice of claim was filed about this incident (BR26).
- § 87(2)(b) and § 87(2)(b) have no criminal convictions in NYC (BR27).

Squad No.: 5

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date